IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

WP(C).No. 37520 of 2007(N)

AGAINST THE ORDER DATED / / IN EX.P.NO.901/2005 IN OPARB.544/2003 of PRL.M.C.,ERNAKULAM

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PETITIONER:

N.K.DEVARAJAN, S/O.KUMARAN P.K.,
37/3719, SRAVANAM, PONNOTH ROAD, KALOOR.

BY ADV. SRI.JOHN JOSEPH(ROY)

RESPONDENT:

SREE GOKULAM CHITS AND FINANCE COMPANY
PVT. LTD., NO. 49, ARCOT ROAD, KODAMBAKKAM,
CHENNAI, REPRESENTED BY POWER OF ATTORNEY,
LOHIDAKSHAN, BUSINESS MANAGER, KALOOR,
KOCHI-17.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

W.P.(C). NO. 37520 OF 2007

Dated this the 18th day of December, 2007

J U D G M E N T

This writ petition is preferred against the order of the Principal Munsiff, Ernakulam, in E.P. 901/05 in Arbitration Case 544/03. I am informed by the learned counsel for the writ petitioner that the execution petition filed for an amount of Rs.73,000/- out of which Rs.45,000/- had already been paid and only balance is outstanding. The court below found that there are some materials to show that he has got the amounts to pay off the liability but is not making the payment and therefore, ordered arrest. Learned counsel very persuasively submits before me that there is no intention for the writ petitioner to run away without making the payment. Therefore, if some indulgence is shown, he will be able to pay the amount. It is also submitted that on account of the failure in the business and other unfortunate circumstances, he is incapacitated to pay in a lumpsum.

2. Since there is an earnest intention on the part of the petitioner to pay the amount, some indulgence can be shown. The writ petition is disposed of as follows:

(i) The writ petitioner is directed to make the balance payment in six monthly equal instalments commencing from 21.1.08.

(ii) If the petitioner commits default in making payment of initial instalment and thereafter default of two consecutive instalments, he will loose the benefit conferred on him and the decree holder can request the court to issue warrant of arrest against him.

(iii) In the light of the said direction, the court below is directed not to arrest him till there is a failure to comply with the direction. The court below is also directed that further proceedings in the E.P. shall be kept in abeyance.

M.N.KRISHNAN, JUDGE

vps